

AMENDED IN SENATE MAY 10, 1999

AMENDED IN SENATE APRIL 6, 1999

SENATE BILL

No. 580

Introduced by Senator Lewis

February 23, 1999

An act to amend Sections ~~646.9, 646.92, 649.92~~ and 3003 of the Penal Code, relating to stalkers.

LEGISLATIVE COUNSEL'S DIGEST

SB 580, as amended, Lewis. Stalkers.

Under existing law, stalking is a crime. Existing law contains various provisions for the notification of victims of stalkers of release from custody.

~~This bill would require the court to include the names and related information of victims of stalkers in the abstract of judgment for purposes of notification and prohibition of contact upon release of the stalker.~~

Existing law requires the Department of Corrections, county sheriff, or director of the local department of corrections to give notice of the release any person who is convicted of stalking or convicted of a felony offense involving domestic violence.

This bill would also require notice of any change in parole status location. It would require additional attempts to locate victims whose address or telephone number is incorrect, or who did not originally request notice. By imposing additional duties on local law enforcement officials, the bill would impose a state-mandated local program.

Existing law generally regulates conditions of parole, including restrictions on where parolees may be located upon release.

This bill would provide that an inmate released on parole for an offense involving stalking may not be returned to a location within 35 miles of the victim's residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate upon parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 646.9 of the Penal Code is~~
2 ~~amended to read:~~
3 ~~646.9. (a) Any person who willfully, maliciously, and~~
4 ~~repeatedly follows or harasses another person and who~~
5 ~~makes a credible threat with the intent to place that~~
6 ~~person in reasonable fear for his or her safety, or the safety~~
7 ~~of his or her immediate family, is guilty of the crime of~~
8 ~~stalking, punishable by imprisonment in a county jail for~~
9 ~~not more than one year or by a fine of not more than one~~
10 ~~thousand dollars (\$1,000), or by both that fine and~~
11 ~~imprisonment, or by imprisonment in the state prison.~~
12 ~~(b) Any person who violates subdivision (a) when~~
13 ~~there is a temporary restraining order, injunction, or any~~

1 ~~other court order in effect prohibiting the behavior~~
2 ~~described in subdivision (a) against the same party, shall~~
3 ~~be punished by imprisonment in the state prison for two,~~
4 ~~three, or four years.~~

5 ~~(e) Every person who, having been convicted of a~~
6 ~~felony under this section, commits a second or subsequent~~
7 ~~violation of this section shall be punished by~~
8 ~~imprisonment in the state prison for two, three, or four~~
9 ~~years.~~

10 ~~(d) In addition to the penalties provided in this~~
11 ~~section, the sentencing court may order a person~~
12 ~~convicted of a felony under this section to register as a sex~~
13 ~~offender pursuant to subparagraph (E) of paragraph (2)~~
14 ~~of subdivision (a) of Section 290.~~

15 ~~(e) For the purposes of this section, “harasses” means~~
16 ~~a knowing and willful course of conduct directed at a~~
17 ~~specific person that seriously alarms, annoys, torments, or~~
18 ~~terrorizes the person, and that serves no legitimate~~
19 ~~purpose. This course of conduct must be such as would~~
20 ~~cause a reasonable person to suffer substantial emotional~~
21 ~~distress, and must actually cause substantial emotional~~
22 ~~distress to the person.~~

23 ~~(f) For purposes of this section, “course of conduct”~~
24 ~~means a pattern of conduct composed of a series of acts~~
25 ~~over a period of time, however short, evidencing a~~
26 ~~continuity of purpose. Constitutionally protected activity~~
27 ~~is not included within the meaning of “course of~~
28 ~~conduct.”~~

29 ~~(g) For the purposes of this section, “credible threat”~~
30 ~~means a verbal or written threat, including that~~
31 ~~performed through the use of an electronic~~
32 ~~communication device, or a threat implied by a pattern~~
33 ~~of conduct or a combination of verbal, written, or~~
34 ~~electronically communicated statements and conduct~~
35 ~~made with the intent to place the person that is the target~~
36 ~~of the threat in reasonable fear for his or her safety or the~~
37 ~~safety of his or her family and made with the apparent~~
38 ~~ability to carry out the threat so as to cause the person who~~
39 ~~is the target of the threat to reasonably fear for his or her~~
40 ~~safety or the safety of his or her family. It is not necessary~~

1 to prove that the defendant had the intent to actually
2 carry out the threat. The present incarceration of a
3 person making the threat shall not be a bar to prosecution
4 under this section.

5 (h) For purposes of this section, the term “electronic
6 communication device” includes, but is not limited to,
7 telephones, cellular phones, computers, video recorders,
8 fax machines, or pagers. “Electronic communication” has
9 the same meaning as the term defined in Subsection 12
10 of Section 2510 of Title 18 of the United States Code.

11 (i) This section shall not apply to conduct that occurs
12 during labor picketing.

13 (j) If probation is granted, or the execution or
14 imposition of a sentence is suspended, for any person
15 convicted under this section, it shall be a condition of
16 probation that the person participate in counseling, as
17 designated by the court. However, the court, upon a
18 showing of good cause, may find that the counseling
19 requirement shall not be imposed.

20 (k) The sentencing court also shall consider issuing an
21 order restraining the defendant from any contact with
22 the victim, that may be valid for up to 10 years, as
23 determined by the court. It is the intent of the Legislature
24 that the length of any restraining order be based upon the
25 seriousness of the facts before the court, the probability
26 of future violations, and the safety of the victim and his or
27 her immediate family.

28 (l) For purposes of this section, “immediate family”
29 means any spouse, parent, child, any person related by
30 consanguinity or affinity within the second degree, or any
31 other person who regularly resides in the household, or
32 who, within the prior six months, regularly resided in the
33 household.

34 (m) The court shall consider whether the defendant
35 would benefit from treatment pursuant to Section 2684.
36 If it is determined to be appropriate, the court shall
37 recommend that the Department of Corrections make a
38 certification as provided in Section 2684. Upon the
39 certification, the defendant shall be evaluated and

1 ~~transferred to the appropriate hospital for treatment~~
2 ~~pursuant to Section 2684.~~

3 **SEC. 2.**

4 *SECTION 1.* Section 646.92 of the Penal Code is
5 amended to read:

6 646.92. (a) The Department of Corrections, county
7 sheriff, or director of the local department of corrections
8 shall give notice not less than 15 days prior to the release
9 from the state prison or a county jail of any person who
10 is convicted of violating Section 646.9 or convicted of a
11 felony offense involving domestic violence, as defined in
12 Section 6211 of the Family Code, or any change in the
13 parole status or parole location of the convicted person,
14 to any person the court identifies as a victim of the
15 offense, a family member of the victim, or a witness to the
16 offense by telephone and certified mail at his or her last
17 known address, upon request. A victim, family member,
18 or witness shall keep the Department of Corrections or
19 county sheriff informed of his or her current mailing
20 address and telephone number to be entitled to receive
21 notice. A victim may designate another person for the
22 purpose of receiving notification. The Department of
23 Corrections, county sheriff, or director of the local
24 department of corrections, shall make all reasonable
25 attempts to locate a person who has requested
26 notification but whose address and telephone number are
27 incorrect or not current. However, the duty to keep the
28 Department of Corrections or county sheriff informed of
29 a current mailing address and telephone number shall
30 remain with the victim.

31 In the event the victim had not originally requested
32 notification under this section, the Department of
33 Corrections, county sheriff, or director of the local
34 department of corrections, as appropriate, shall make an
35 attempt to contact the victim or, if the victim is a minor,
36 the parent or guardian of the victim, of the victim's right
37 to notification under this section.

38 (b) All information relating to any person who
39 receives notice under this section shall remain

1 confidential and shall not be made available to the person
2 convicted of violating this section.

3 (c) For purposes of this section, “release” includes a
4 release from the state prison or a county jail because time
5 has been served, a release from the state prison or a
6 county jail to parole or probation supervision, or an
7 escape from an institution or reentry facility.

8 (d) The Department of Corrections or county sheriff
9 shall give notice of an escape from an institution or
10 reentry facility of any person convicted of violating
11 Section 646.9 or convicted of a felony offense involving
12 domestic violence, as defined in Section 6211 of the
13 Family Code, to the notice recipients described in
14 subdivision (a).

15 (e) Substantial compliance satisfies the notification
16 requirements of subdivision (a).

17 ~~SEC. 3.~~

18 *SEC. 2.* Section 3003 of the Penal Code is amended to
19 read:

20 3003. (a) Except as otherwise provided in this
21 section, an inmate who is released on parole shall be
22 returned to the county that was the last legal residence
23 of the inmate prior to his or her incarceration.

24 For purposes of this subdivision, “last legal residence”
25 shall not be construed to mean the county wherein the
26 inmate committed an offense while confined in a state
27 prison or local jail facility or while confined for treatment
28 in a state hospital.

29 (b) Notwithstanding subdivision (a), an inmate may
30 be returned to another county if that would be in the best
31 interests of the public. If the Board of Prison Terms
32 setting the conditions of parole for inmates sentenced
33 pursuant to subdivision (b) of Section 1168, or the
34 Department of Corrections setting the conditions of
35 parole for inmates sentenced pursuant to Section 1170,
36 decides on a return to another county, it shall place its
37 reasons in writing in the parolee’s permanent record and
38 include these reasons in the notice to the sheriff or chief
39 of police pursuant to Section 3058.6. In making its
40 decision, the paroling authority shall consider, among

1 others, the following factors, giving the greatest weight to
2 the protection of the victim and the safety of the
3 community:

4 (1) The need to protect the life or safety of a victim,
5 the parolee, a witness, or any other person.

6 (2) Public concern that would reduce the chance that
7 the inmate's parole would be successfully completed.

8 (3) The verified existence of a work offer, or an
9 educational or vocational training program.

10 (4) The existence of family in another county with
11 whom the inmate has maintained strong ties and whose
12 support would increase the chance that the inmate's
13 parole would be successfully completed.

14 (5) The lack of necessary outpatient treatment
15 programs for parolees receiving treatment pursuant to
16 Section 2960.

17 (c) The Department of Corrections, in determining
18 an out-of-county commitment, shall give priority to the
19 safety of the community and any witnesses and victims.

20 (d) In making its decision about an inmate who
21 participated in a joint venture program pursuant to
22 Article 1.5 (commencing with Section 2717.1) of Chapter
23 5, the paroling authority shall give serious consideration
24 to releasing him or her to the county where the joint
25 venture program employer is located if that employer
26 states to the paroling authority that he or she intends to
27 employ the inmate upon release.

28 (e) (1) The following information, if available, shall
29 be released by the Department of Corrections to local law
30 enforcement agencies regarding a paroled inmate who is
31 released in their jurisdictions:

32 (A) Last, first, and middle name.

33 (B) Birth date.

34 (C) Sex, race, height, weight, and hair and eye color.

35 (D) Date of parole and discharge.

36 (E) Registration status, if the inmate is required to
37 register as a result of a controlled substance, sex, or arson
38 offense.

1 (F) California Criminal Information Number, FBI
2 number, social security number, and driver's license
3 number.

4 (G) County of commitment.

5 (H) A description of scars, marks, and tattoos on the
6 inmate.

7 (I) Offense or offenses for which the inmate was
8 convicted that resulted in parole in this instance.

9 (J) Address, including all of the following information:

10 (i) Street name and number. Post office box numbers
11 are not acceptable for purposes of this subparagraph.

12 (ii) City and ZIP Code.

13 (iii) Date that the address provided pursuant to this
14 subparagraph was proposed to be effective.

15 (K) Contact officer and unit, including all of the
16 following information:

17 (i) Name and telephone number of each contact
18 officer.

19 (ii) Contact unit type of each contact officer such as
20 units responsible for parole, registration, or county
21 probation.

22 (L) A digitized image of the photograph and at least
23 a single digit fingerprint of the parolee.

24 (M) A geographic coordinate for the parolee's
25 residence location for use with a Geographical
26 Information System (GIS) or comparable computer
27 program.

28 (2) The information required by this subdivision shall
29 come from the statewide parolee data base. The
30 information obtained from each source shall be based on
31 the same timeframe.

32 (3) All of the information required by this subdivision
33 shall be provided utilizing a computer-to-computer
34 transfer in a format usable by a desktop computer system.
35 The transfer of this information shall be continually
36 available to local law enforcement agencies upon request.

37 (4) The unauthorized release or receipt of the
38 information described in this subdivision is a violation of
39 Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed within one-quarter mile of any school including any or all of grades kindergarten to 6, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law.

(k) (1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

1 (2) Notwithstanding paragraph (1), the Department
2 of Justice shall be the agency primarily responsible for the
3 proper release of information under LEADS that relates
4 to fingerprint cards.

5 ~~SEC. 4.~~

6 *SEC.* 3. Notwithstanding Section 17610 of the
7 Government Code, if the Commission on State Mandates
8 determines that this act contains costs mandated by the
9 state, reimbursement to local agencies and school
10 districts for those costs shall be made pursuant to Part 7
11 (commencing with Section 17500) of Division 4 of Title
12 2 of the Government Code. If the statewide cost of the
13 claim for reimbursement does not exceed one million
14 dollars (\$1,000,000), reimbursement shall be made from
15 the State Mandates Claims Fund.

